

Office of Natural and Human Environment
Federal Highway Administration

Transportation Conformity Rule Amendments Summary June 2004

Background

This rule finalizes two separate proposals made by the U.S. Environmental Protection Agency (EPA) to address the new air quality standards (68 FR 62690, November 5, 2003) and the March 1999 court decision (68 FR 38974, June 30, 2003). The rule also finalizes a number of miscellaneous provisions that were also included in the two proposals to clarify and streamline the transportation conformity process. However, this rule does not finalize provisions of the November 5, 2003 proposal that addressed certain PM-2.5 precursor, and PM-2.5 and PM-10 hot-spot requirements. EPA intends to finalize PM-2.5 precursor requirements after the close of the comment period on EPA's broader PM-2.5 implementation strategy. EPA also intends to issue a supplemental proposal on hot-spots to request additional comment on additional options. EPA intends to finalize both of these provisions before PM-2.5 designations become effective.

Summary of Amendments

New Standards

1. **Conformity Grace Period and Revocation of the 1-Hour Ozone Standard.** This section revises the grace period, consistent with current law, to address the new standards. Metropolitan transportation plans and TIPs in new nonattainment areas must be found to conform against the new standard by 1-year after the effective date of designation - by June 15, 2005 for 8-hour ozone areas. In addition, conformity for the 1-hour ozone standard will no longer apply in existing 1-hour ozone nonattainment and maintenance areas once the 1-hour standard is revoked. For most areas, this will be on June 15, 2005. However for the 3 existing 1-hour maintenance areas with Early Action Compacts (Denver-Boulder, CO; Greensboro-Winston Salem-High Point, NC; and Nashville, TN), the 1-hour standard will not be revoked on June 15, 2005, and they must continue to demonstrate 1-hour conformity until 1 year after either they are designated nonattainment (deferral ended) or attainment for the 8-hour standard. This could be as late as 2009. This section also provides additional information on initial conformity determinations, regional emissions modeling requirements, timely implementation of transportation control measures, multi-jurisdictional areas, donut areas, and isolated rural areas.
2. **General Changes in Interim Emissions Tests.** This section establishes 2002 baseline year tests for 8-hour ozone and PM-2.5 areas. EPA is not changing the 1990 baseline year tests for 1-hour ozone, CO, PM-10 and NO2 areas. This section also creates a "build-no-greater-than-no-build" test to allow certain ozone and CO areas of lower classification and all PM-10, PM-2.5, and NO2 areas to be able to determine conformity if the build emissions are equal to or lower than the no-build emissions.

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3. **Regional Conformity Tests in 8-Hour Ozone Areas That Do Not Have 1-Hour Ozone SIPs.** This section provides that once 8-hour budgets are found adequate or approved by EPA, conformity must be demonstrated against those budgets. Prior to 8-hour budgets being established, marginal and below classifications and subpart 1 areas, that do not have 1-hour budgets, must demonstrate conformity by meeting either the "build-no-greater-than-no-build test" or the "no-greater-than-2002 test." Prior to 8-hour budgets being established, moderate and above classifications, that do not have 1-hour budgets, must demonstrate conformity by meeting both the "build-less-than-no-build test" and the "less-than-2002 test."
4. **Regional Conformity Tests in 8-Hour Ozone Areas That Have 1-Hour Ozone SIPs.** This section provides that once 8-hour budgets are found adequate or approved by EPA, conformity must be demonstrated against those budgets. Prior to 8-hour budgets being established, all areas with adequate or approved 1-hour budgets must use them to demonstrate conformity, unless it is determined through interagency consultation that using the interim emissions tests is more appropriate. In addition, in 8-hour nonattainment areas where the 1-hour budgets do not cover the entire 8-hour area, the 1-hour budget test and the interim emission test(s) must be completed according to 8-hour classification.
5. **Regional Conformity Tests in PM-2.5 Areas.** This section provides that once PM-2.5 budgets are found adequate or approved by EPA, conformity must be demonstrated against those budgets. Prior to PM-2.5 budgets being established, PM-2.5 areas must demonstrate conformity by meeting either the "build-no-greater-than-no-build test" or the "no-greater-than-2002 test."
6. **Consideration of Direct PM-2.5 and PM-2.5 Precursors in Regional Emissions Analyses.** PM2.5 nonattainment areas will be subject to conformity 12 months after EPA's nonattainment designation becomes effective. Prior to adequate or approved SIP budgets, the interim emissions test will be required, at a minimum, for directly emitted PM-2.5 from motor-vehicle tailpipe, brake wear, and tire wear emissions. EPA is not finalizing any requirements for addressing PM-2.5 precursors at this time. In the near future, EPA will be proposing a PM-2.5 implementation rule, which will also address precursors in New Source Review and SIP planning activities. EPA plans to consider comments on the implementation rule, as well as comments received on this rulemaking, and finalize appropriate requirements to address precursors by the time PM-2.5 designations are effective.
7. **Re-entrained Road Dust in PM-2.5 Regional Emissions Analyses.** This section provides that conformity analyses would only need to include re-entrained road dust if the EPA Regional Administrator or the State air quality agency determines that re-entrained road dust is a significant contributor to the PM-2.5 regional air quality problem.
8. **Construction-Related Fugitive Dust in PM-2.5 Regional Emissions Analyses.** This section provides that conformity analyses would only need to include construction-related fugitive dust from highway or transit projects if the SIP identifies construction dust as a significant contributor to the regional air quality problem.
9. **Compliance with PM-2.5 SIP Control Measures.** This section requires that FHWA and FTA projects in PM-2.5 nonattainment and maintenance areas comply with the applicable SIP's PM-2.5 control measures, when such measures exist. FHWA/FTA would assure implementation of a required control measure by obtaining enforceable written commitments

from the project sponsor and/or operator prior to making a project-level conformity determination.

10. **PM-2.5 Hot-Spot Analyses.** EPA has decided to request further public comment on additional options for PM-2.5 hot-spot requirements, and will be issuing a supplemental notice of proposed rulemaking in the near future. EPA intends to finalize appropriate requirements to address PM-2.5 hot-spots by the time PM-2.5 designations are effective.
11. **PM-10 Hot-Spot Analyses.** EPA has decided to request further public comment on additional options for revising PM-10 hot-spot requirements, and will be issuing a supplemental notice of proposed rulemaking in the near future. EPA intends to finalize appropriate revisions to the requirements for addressing PM-10 hot-spots in conjunction with its finalization of requirements to address PM-2.5 hot-spots.

March 1999 Court Decision

12. **Federal Projects.** This section revises the conformity rule to be consistent with FHWA/FTA's most recent guidance on what projects can proceed during a conformity lapse. Non-exempt project phases can be implemented during a conformity lapse only if they received all required FHWA or FTA approvals or funding commitments and met associated conformity requirements prior to the lapse. No new approvals or funding commitments for subsequent or new project phases can be made during the lapse. This does not change current practice.
13. **Using Motor Vehicle Emission Budgets from Submitted SIPs for Transportation Conformity Determinations.** This section revises the rule to include the process by which EPA will review and make adequacy finding for submitted SIPs. Motor vehicle emissions budgets cannot be used for conformity determinations until they are found adequate or approved by EPA.
14. **Non-Federal Projects.** This section revises the conformity rule, consistent with the court decision, to not allow regionally significant non-Federal projects to be advanced during a conformity lapse unless they have received all necessary State and local approvals prior to the lapse. This does not change current practice.
15. **Conformity Consequences of Certain SIP Disapprovals.** This section revises the conformity rule to change the point in time at which conformity consequences apply when EPA disapproves a control strategy SIP without a protective finding. A conformity "freeze" will occur immediately upon the effective date of EPA's final disapproval that does not include a protective finding. This does not change current practice.
16. **Safety Margins.** This section eliminates a provision of the rule that allowed, in certain circumstances, safety margins to be utilized for conformity purposes prior to approval by EPA. This change should not affect any areas and does not change current practice.

Other Revisions

- 17. Streamlining the Frequency of Conformity Determinations.** This section eliminates several conformity "triggers." First, it eliminates the provision that conformity of TIPs be determined within six months of the date that FHWA/FTA determines conformity of the transportation plan. It also eliminates the requirements that conformity be determined within 18 months of approval of a SIP that adds, deletes, or changes a TCM. This section also clarifies that the 18-month clock only needs to be satisfied when a conformity determination has not already been made using the same budget that is in the newly-approved SIP.
- 18. Latest Planning Assumptions.** This section revises the rule to allow conformity determinations to be based on the latest planning assumptions that are available at the time the conformity analysis begins as determined through interagency consultation, rather than at the time of FHWA/FTA's conformity determination.
- 19. Horizon Years for Hot-Spot Analyses.** This section clarifies that project-level hot-spot analyses must consider the full time frame of the area's transportation plan, or regional emissions analysis, at the time the hot-spot analysis is conducted.
- 20. Relying on a Previous Regional Emissions Analysis.** This section revises the rule so that MPOs can rely on a previous regional emissions analysis for minor (not regionally significant) transportation plan/TIP revisions, and clarifies that a conformity determination that relies on a previous regional emissions analysis does not satisfy the three-year frequency requirement.
- 21. Miscellaneous Revisions.** This section clarifies definitions for "control strategy implementation plan," "milestone," "donut areas," and "isolated rural nonattainment and maintenance areas." This section also incorporates EPA's existing insignificance and limited maintenance plan policies into the rule. In addition, this section clarifies the grace period for when the more rigorous transportation modeling and plan content requirements apply when circumstances change in certain ozone and CO areas. This section also clarifies conformity requirements for non-Federal projects in isolated rural areas, when adequate or approved budgets must be used, and the budget test requirements for the attainment year and once a maintenance plan is submitted. Finally, this section makes a minor revision to the exempt project list.
- 22. Conformity SIPs.** The rulemaking also clarifies when provisions of the rule apply in nonattainment and maintenance areas with EPA-approved conformity SIPs. All provisions relating to the new standards apply immediately in all areas. In addition, all provisions directly impacted by the March 1999 court decision apply immediately. However, in areas with approved conformity SIPs, other provisions of this rulemaking will not be effective until the State includes them in a SIP revision and EPA approves that revision.